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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,831	05/10/2001	Arnold M. Gutierrez	AUS920010325US1	5466

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Robert V. Wilder  
Attorney at Law  
4235 Kingsburg Drive  
Round Rock, TX 78681

EXAMINER
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KRAMER, JAMES A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/852,831

Applicant(s)

GUTIERREZ ET AL.

Examiner

James A. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC §101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requires of this title.

Claims 1, 4, 11, 12 and 13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, the claims only recite an abstract idea. The recited steps of designating a predetermined reserve price, receiving price bids, determining that none of the price bids is equal to or greater than the reserve price, determining that an extension of time was authorized by the seller and extending the auction period; do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user. These steps only constitute an idea of how to conduct an auction.

Although the recited process might produce a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, the claims are deemed to be directed to non-statutory subject matter. Examiner suggests amending

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the independent claim (Claim 1) to include the limitations of dependent claim 2, namely conducting the auction on an auction server through an interconnection network.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausuble in view of Alaia et al.

Ausuble teaches computer implemented methods and apparatus for auctions including an auctioneer's system (auction server) and a plurality of user systems representing an individual bidder (price bid being input bidder using a computer device). The systems are interconnected via a communication system. The communication system can represent any system capable of providing the necessary communication and includes for example a local or wide area network such as for example ethernet, token ring, or alternatively a telephone system, either private or public, the internet, the worldwide web or the information superhighway. (column 7; lines 51-65) (bidders being selectively enabled to connect to auction server through an interconnection network including an Internet interconnection network). Each of the systems includes a typical user interface for input/output and can include a conventional keyboard, display and other conventional devices (column 7; line 66 – column 8; line 1) (enabling the seller to input parameters regarding the auction using a computer device & price bid being input bidder using a portable computer device).

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Ausuble does not specifically teach the use of wireless devices. Examiner takes Official Notice that it wireless technology is old and well known in the art as a system capable of providing the necessary communication with a interconnection network, especially the Internet. As a result, It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Ausuble to include a wireless communication system for connecting buyers and sellers to the auction server in order to allow users at remote location to participate in the auction. This includes sellers inputting auction parameters via wireless devices as well as buyers submitting price bids via wireless devices, including wireless phone devices.

Referencing Example Seven of the Invention's Application beginning on column 28, line 40, Ausuble teaches transmitting bids to the auction system (column 28; lines 66-67)(receiving price bids from bidders for items during auction period at an auction server). Ausuble also teaches, including a reserve price which must be exceeded or some of the objects are not sold (column 30; lines 43-47) (designating a predetermined reserve price for item, determining that none of price bids is equal to or greater than reserve price).

The system of Ausuble does not teach determining that an extension of auction period was authorized by a seller if reserve price is not met and automatically extending the auction period. Ausuble also does not teach enabling seller to enter a duration for the extension nor a number of extensions.

Alaia et al. teaches flexible overtime in an online auction system. Alaia et al. teaches flexible overtime with two aspects: variable duration of overtime intervals and variable overtime triggers (column 13; lines 40-41). Alaia et al. further teaches storing a parameter that specifies

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the length of the overtime period (column 14; lines 33-34) (enabling seller to enter a duration for the extension). Alaia et al. also teaches a trigger for each lot being bid-related, in that they involve an evaluation of some attribute or attributes of a bid against one or more trigger criteria (column 13; lines 53-56). Examiner notes that these trigger criteria could clearly be a reserve price not being met. The use of triggers and overtime as taught by Alaia et al. is used in order to allow the possibility of a lot to remain open for further bidding by bidders (abstract).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the auction system of Ausuble to utilize the reserve price as an overtime trigger as taught by Alaia et al. in order to allow the possibility of a lot to remain open for further bidding by bidders.

### *Conclusion*


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (703) 305-5241. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (703) 305-4716. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

James A. Kramer  
Examiner  
Art Unit 3627

JAK

  
Richard Chilcot  
Senior Patent Examiner  
Technology Center  
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